IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CASE NUMBER 5:16-CV-59-D

JOSEPH JEMSEK M.D., Plaintiff, v. NORTH CAROLINA MEDICAL BOARD, et al., Defendants.	DEFENDANTS' MOTION TO DISMISS Fed. R. Civ. P. 12(b)(1), (b)(2), and (b)(6)

Pursuant to Rules 12(b)(1), (b)(2), and (b)(6) of the Federal Rules of Civil Procedure and Rule 7.1 of the Court's Local Civil Rules, the defendants respectfully move to dismiss plaintiff Joseph Jemsek's amended complaint.

The grounds for the motion include the following:

1. The Eleventh Amendment to the United States Constitution bars Dr. Jemsek's claims against the Medical Board and against the Board-member defendants in their official capacities. For this reason, subject-matter jurisdiction and personal jurisdiction over these defendants are both absent.

2. Dr. Jemsek lacks Article III standing to pursue his individual-capacity claims against the Board-member defendants. For this reason, subject-matter jurisdiction is absent as to those claims.

3. Dr. Jemsek has failed to state two elements of his antitrust claims: (a) any anticompetitive effect, and (b) a cognizable relevant market. The complaint therefore fails to state a claim upon which relief can be granted.

For these reasons, and well as the more detailed reasons stated in the accompanying memorandum of law, the defendants respectfully request that the Court dismiss Dr. Jemsek's complaint in its entirety and grant all other relief that the Court considers just.

This 7th day of April, 2016.

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CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2016, I electronically filed the foregoing Motion to Dismiss with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

This the 7th day of April, 2016.

/s/ Stephen D. Feldman